

**CHAPTER XVII**  
**OF OFFENCES AGAINST PROPERTY**

**Of Theft**

**377. Theft.-** Whoever, intending to take dishonestly any movable property out of the possession of any person without that person's consent, moves that property in order to such taking, is said to commit theft.

*Explanation 1.-* A thing so long as it is attached to the earth, not being movable property, is not the subject of theft; but it becomes capable of being the subject of theft as soon as it is severed from the earth.

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1. Subs. by Act 26 of 1955, sec. 117 and Sch., for "transportation for life" (w.e.f.1.1.1956)

*Explanation 2.-* A moving effected by the same act which affects the severance may be a theft.

*Explanation 3.-* A person is said to cause a thing to move by removing an obstacle which prevented it from moving or by separating it from any other thing, as well as by actually moving it.

*Explanation 4.* A person, who by any means causes an animal to move is said to move that animal, and to move everything which, in consequence of the motion so caused, is moved by that animal.

*Explanation 5.* The consent mentioned in the definition may be express or implied, and may be given either by the person in possession, or by any person having for the purpose authority either express or implied.

**Illustrations**

A cuts down a tree on Z's ground, with the intention of dishonestly taking the tree out of Z's possession without Z's consent. Here, as soon as A has severed the tree in order to such taking, he has committed theft.

A puts a bait for dogs in his pocket, and thus induces Z's dog to follow it. Here, if A's intention be dishonestly to take the dog out of A's possession without Z's consent, A has committed theft as soon as Z's dog has begun to follow A.

A meets a bullock carrying a box of treasure. He drives the bullock in a certain direction, in order

that he may dishonestly take the treasure. As soon as the bullock begins to move, A has committed theft of the treasure.

A, being Z's servant and entrusted by Z with the care of Z's plate, dishonestly runs away with the plate, without Z's consent. A has committed theft of the treasure.

Z, going on a journey, entrusts his plate to A, the keeper of the warehouse, till Z shall return. A carries the plate to a goldsmith and sells it. Here the plate was not in Z's possession. It could not therefore be taken out of Z's possession, and A has not committed theft, though he may have committed criminal breach of trust.

A finds a ring belonging to Z on a table in the house which Z occupies. Here the ring is in A's possession, and if A dishonestly removes it, A commits theft.

A finds a ring lying on the highroad. Not in the possession of any person. A, by taking it, commits no theft, though he may commit criminal misappropriation of property.

A sees a ring belonging to Z lying on a table in Z's house. Not venturing to misappropriate the ring immediately for fear of search and detection, A hides the ring in a place where it is highly improbable that it will ever be found by Z, with the intention of taking the ring from the hiding place and selling it when the loss is forgotten. Here A, at the time of first moving the ring, commits theft.

A delivers his watch to Z, a jeweler, to be regulated. Z carries it to his shop. A, not owing to the jeweler any debt for which the jeweler might lawfully detain the watch as a security, enters the shop openly, takes his watch by force out of Z's hand, and carries it away. Here A, though he may have committed criminal trespass and assault, has not committed theft, in as much as what he did was not done dishonestly.

If A owes money to Z for repairing the watch, and if Z retains the watch lawfully as a security for the debt, and A takes the watch out of Z's possession, with the intention of depriving Z of property as a security for his debt, he commits theft, though the watch is his own property as a security for his debt, he commits theft, in as much as he takes it dishonestly.

Again, if A, having pawned his watch to Z, takes it out of Z's possession without Z's consent, not having paid what he borrowed on the watch, he commits theft, though the watch is his own property in as much as he takes it dishonestly.

A takes an article belonging to Z out of Z's possession, without Z's consent, with the intention of keeping it until he obtains money from Z as a reward for its restoration. Here A takes dishonestly; A has therefore committed theft.

A, being on friendly terms with Z, goes into Z's library in Z's absence, and takes away a book

without Z's express consent of r the purpose merely of reading it, and with the intention of returning .Here it is probable that A may have conceived that he had Z's implied consent o use Z's book. If this was A's impression, A has not committed theft.

A asks charity from Z's wife. She gives A ,money, food and clothes, which A knows to belong to Z her husband . here it is probable that A may conceive that Z's wife is authorized to give away alms. If this was A's impression, A has not committed theft.

A is the paramour of Z's and to be such property , which A knows to belong to her husband Z, and to be such property as she has no authority from Z to give If A takes the property dishonestly, he commits theft.

A, in good faith, believing property belonging to Z to be A's own property, takes that property out of B's possession. Here, as A does not take dishonestly, he does not commit theft.

## COMMENTS

The delay in hearing of appeal for long period is no cause for not interfering with an order of acquittal which was based on conjectures an surmises, resulting in gross failure of justice; State of Rajas than v. Shanker, 2000 Cr LJ 266 (Raj) .

**378. Punishment for theft.-** Whoever commits theft shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

## CASSIFICATION OF OFFENCE

Punishment-Imprisonment for 3 years, or fine, or both-Cognizable – Non-bailable-Triable by any Magistrate- Compoundable by th3 owner of the property stolen with the permission of court.

**379. Theft in dwelling house, etc.-** Whoever commits theft in any building, tent or vessel, which building, tent or vessel is used as a human dwelling, or used for the custody of property, shall be punished with imprisonment of either description in for a term, which may extend to seven years, and shall also be liable to fine.

## CLASSIFICATION OF OFFENCE

Punishment-Imprisonment for 7years and fine-Cognizable –Non-bailable-Triable by Magistrate  
–Non-compoundable.

## STATE AMENDMENTS

### State of Tamil Nadu:

Section 380 of the Indian Penal Code (Central Act XLV of 1860)(hereinafter in this part referred to as the principal Act), shall be renumbered as sub-section (1) of that section and after sub-section (1) as so renumbered, the following sub-section shall be added, namely:-

“(2) Whoever commits theft in respect of any idol or icon in any building used as a place of worship shall be punished with rigorous imprisonment for a term which shall not be less than two years but which may extend to three years and with fine which shall not be less than two thousand rupees:

Provided that the court may, for adequate and special reasons to be mentioned in the judgment impose a sentence of imprisonment for a term of less than two years.”

[Vide Tamil Nadu Act 28 of 1993, sec.2].

**380. Theft by clerk or servant of property in possession of master.-** Whoever, being a clerk or servant, or, or being employed in the capacity of a clerk or servant, commits theft in respect of any property in the possession of his master or employer, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

## CLASSIFICATION OF OFFENCE

Punishment-Imprisonment for 7 years, or fine-Cognizable – Non-bailable-Triable by any Magistrate- Compoundable by the owner of the property stolen with the permission of court.

**381. Theft after preparation made for causing death, hurt or restraint in order to the committing of the theft.-** Whoever commits theft, having made preparation for causing death, or hurt, or restraint, or fear of death, or of hurt, or of restraint, to any person, in order to the committing of such theft, or in order to the retaining of property taken by such theft, shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

### Illustrations

A commits theft on property in Z's possession; and , while committing this theft, he has a loaded pistol under his garment, having provided this pistol for the purpose of hurting Z in case Z should resist.

A has committed the offence defined in this section.

A picks Z's pocket, having posted several of his companions near him, in order that they may restrain Z, if Z should perceive what is passing and should resist, or should attempt to apprehend A. A has committed the offence defined in this section.

### CLASSIFICATION OF OFFENCE

Punishment-Imprisonment for 10 years and fine-Cognizable –Non-bailable-Triable by Magistrate of the first class–Non-compoundable.

## Of Extortion

**382. Extortion.-** Whoever intentionally puts any person in fear of any injury to that person, or to any other, and thereby dishonestly induces that person so put in fear to deliver to any person any property or valuable security, or any thing signed or sealed which may be converted into a valuable security, commits "extortion"

### Illustrations

A threatens to publish a defamatory libel concerning A unless Z gives him money. He thus induces Z to give him money. A has committed extortion.

A threatens Z that he will keep Z's child in wrongful confinement, unless Z will sign and deliver to A a promissory note binding Z to pay certain monies to A. Z signs and delivers to A a promissory note binding to pay certain monies to A. Z signs and delivers the note. A has committed extortion.

A threatens to send club-men to plough up Z's field unless Z will sign and deliver to a bond. A has committed extortion.

A, by putting Z in fear of grievous hurt, dishonestly induces Z to sign or affix his seal to a blank paper and deliver it to A. Z signs and delivers that paper to A. Here, as the paper so signed may be converted into a valuable security. A has committed extortion.

**383. Punishment for extortion.-** Whoever commits extortion shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

#### CLASSIFICATION OF OFFENCE

Punishment-Imprisonment for 3 years, or fine, or both-Cognizable –Non-bailable-Triable by any Magistrate–Non-compoundable.

**384. Putting person in fear of injury in order to commit extortion.-** Whoever, in order to the committing of extortion, puts any person in fear, or attempts to put any person in fear, of any injury, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

#### CLASSIFICATION OF OFFENCE

Punishment-Imprisonment for 2 years ,or fine, or both-Cognizable –Bailable-Triable by Magistrate –Non-compoundable.

**385. Extortion by putting a person in fear of death or grievous hurt to.-** Whoever commits extortion by putting any person in fear of death or of grievous hurt to that person or to any other , shall be punished with imprisonment of either description for a tem which may extend to ten years, and shall also liable to fine.

#### CLASSIFICATION OF OFFENCE

Punishment-Imprisonment for 10 years and fine-Cognizable –Non-bailable-Triable by Magistrate of the first class–Non-compoundable.

**386. Putting person in fear of dearth or of grievous hurt, in order to commit extortion.-** Whoever, in order to the committing of extortion, puts or attempts to put any punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

#### CLASSIFICATION OF OFFENCE

Punishment-Imprisonment for 7 years and fine-Cognizable –Non-bailable-Triable by Magistrate of the first class–Non-compoundable.

**387. Extortion by threat of accusation of an offence punishable with death or imprisonment for life, etc.-**Whoever commits extortion by putting any person or any other ,or having committed or attempted to commit any offence punished with death, or with <sup>1</sup>[imprisonment for life], or with imprisonment for

a term which may extend to ten years, shall be punished with also be liable to fine; and , if the offence be punishable under section 377 of his Code, may be punished with <sup>1</sup>[imprisonment for life].

#### CLASSIFICATION OF OFFENCE

Punishment-Imprisonment for 10 years and fine-Cognizable –Non-bailable-Triable by Magistrate of the first class–Non-compoundable.

**388. Putting person in fear of accusation of offence, in order to commit extortion,-** Whoever, in order to committing of exertion, puts or attempts to put any person in fear of an accusation, against that person or any other , of having committed, or attempted to commit an offence punishable with death or with <sup>1</sup>[imprisonment of relief], or with imprisonment of e a term which ,ay extend to ten years, shall be punished with imprisonment of either description for a term which may extend to ten years , shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fined; and , if the offence be punished under section 377 of this Code, may be punished with <sup>1</sup>[imprisonment of relief].

#### CLASSIFICATION OF OFFENCE

**Para I :** Punishment-Imprisonment for 10 years and fine-Cognizable –Non-bailable-Triable by Magistrate of the first class–Non-compoundable.

**Para II:** Punishment-Imprisonment for life -Cognizable –Bailable-Triable by Magistrate of the first class–Non-compoundable.

Of Robbery and Dacoity

**389. Robbery.** –In all robbery there is either theft or extortion.

When theft is robbery.- Theft is “ robbery” if , in order to the committing if the theft ,or in committing the theft, or in carving away or attempting to carry away property obtained by the theft, the offender, for that end , voluntarily causes or attempts to cause to any person death or hurt or wrongful restraint , or fear of instant death or of instant hurt, or of instant wrongful restraint death or of instant hurt, or of instant wrongful restraint.

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1. Subs. by Act 26 of 1955, sec.117 and Sch., for “transportation for life” (w.e.f.1-1-1956).

When extortion is robbery.- Extortion is “robbery” if the offender, at the time of committing the extortion, is in the presence of the person but in fear, and commits the extortion by putting that person in fear of instant death, of instant hurt, or of instant wrongful restraint to that person or to some other person, and, by so putting in fear includes the person so put in fear then and there to deliver up the thing extorted.

*Explanation.-* The offender is said to be present if he is sufficiently near to put the other person in fear of instant death, of instant hurt, or of instant wrongful restraint.

### **Illustrations**

- (a) A holds Z down and fraudulently takes Z’s money and jewels from Z’s clothes without Z’s consent. Here A has committed theft, and in order to the committing of that theft, has voluntarily caused wrongful restraint to Z. A has therefore committed robbery.
- (b) A meets Z on the high road, shows a pistol, and demands Z’s purse. A in consequence, surrenders his purse. Here A has extorted the purse from Z by putting him in fear of instant hurt, and the purse from Z, by causing Z to be in fear of instant hurt to the child who is there present. A has therefore committed robbery on Z.
- (c) A meets Z and Z’s child on the high road. A takes the child and threatens to fling it down a precipice, unless Z delivers his purse. Z in consequence delivers his purse. Here A has extorted the purse from Z, by causing Z to be in fear of instant hurt to the child who is there present. A has therefore committed robbery on Z.
- (d) A obtains property from Z by saying- “Your child is in the hands of my gang, and will be put to death unless you send us ten thousand rupees”. This is extortion, and punishable as such; but it is not robbery, unless Z is put in fear of the instant death of his child.



## COMMENTS

In order that theft may constitute robbery, prosecution has to establish-  
if in order to the committing of thief ; or

in committing the theft, or

in carrying away or attempting to carry away property obtained by theft;  
the offender for that end i.e. any of the ends contemplated by (a) to (c).

voluntarily causes or attempts to cause to any person death or hurt or wrongful restraint or fear of instant wrongful restraint

In other words, theft would only be robbery if for any of the ends mentioned in (a) to (c) the offender voluntarily causes or attempts to causes to any person death or hurt or wrongful restraint or fear of instant death or of instant wrongful restraint. If the ends does not fall within (a) or(c) but, the offender still causes or attempts to cause to any person death or hurt or wrongful restraint or fear of instant death or of instant hurt or instant hurt or instant wrongful restraint, the offence would not be robbery. That (a) or (b) or (c) have to be read conjunctively with (d) and (e). It is only when (a) or (b) or (c) co-exist with (d) and (e) or there is a nexus between any of them and (d), (e) would amount to robbery; State of Maharashtra v. Joseph Mingel Koli , (1997) 2 Crimes 228 (Bom).

**390. Decoyty.-** When five or more person conjointly commit or attempt to commit a robbery, or where the whole number of persons conjointly committing or attempting to commit a robbery, and persons present and aiding such commission or attempting to commit a robbery, and persons present and aiding such commission or attempt, amount to five or ,more, every person so committing, attempting or aiding, is said to commit “dacoity”.

## COMMENTS

When robbery is either committed to an attempt to commit it is made by five or more persons then all such, who are present or aiding in its commission or in an attempt to commit it, would commit the offence of dacoity; State of Maharashtra v. Josheph Mingel Koli ,(1997) 2 Crime 228 (Bom).

**391.Punishment for robbery.-** Whoever commits robbery shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine; and, if the robbery be committed on the highway between sunset and sunrise, the imprisonment may be extended to fourteen years.

### *CLASSIFICATION OF OFFENCE*

**Para I :** Punishment-Rigorous imprisonment for 10 years and fine-Cognizable –Non-bailable-Triable by Magistrate of the first class–Non-compoundable.

**Para II:** Punishment- Rigorous imprisonment for 14 years, and fine -Cognizable –Non-bailable-Triable by Magistrate of the first class–Non-compoundable.

**392. Attempt to commit robbery.-** Whoever attempts to commit robbery shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine..

### *CLASSIFICATION OF OFFENCE*

Punishment-Rigorous imprisonment for 7 years and fine-Cognizable –Non-bailable-Triable by Magistrate of the first class–Non-compoundable.

**393. voluntarily causing hurt in committing robbery.-** If any person, in committing or in attempting to committing robbery, voluntarily cause hurt , such person, and any other person jointly concerned in committing or attempting to commit such robbery, shall be punished with <sup>1</sup>[imprisonment for life], or with rigorous imprisonment for a term which may extend to ten years, and shall be liable to fine.

### **CLASSIFICATION OF OFFENCE**

Punishment- Imprisonment for life, or rigorous imprisonment for 10 years and fine- Cognizable- Non-bailable-Triable by Magistrate of the first class-Non-compoundable.

### **COMMENTS**

- (i) Not only the person who actually cause hurt by but an associate of his/ her would equally be liable for the mischief contemplated by this section; Shravan Dashrath Darange v. State of Maharashtra, (1997) 2 Crime 47 (Bom).
- (ii) When it is proved that assault was made with motive to successfully rob the persons the conviction under section 304 IPC against both person; Rajjo v. State, 1999 Cr LJ 2996 (All).

**394. Punishment for dacoity.-** Whoever commits dacoity shall be punished with <sup>1</sup>[imprisonment for life], or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

### **CLASSIFICATION OF OFFENCE**

Punishment- Imprisonment for life, or rigorous imprisonment for 10 years and fine- Cognizable- Non-bailable-Triable by Court of Session-Non-compoundable.

1. Subs. by Act 26 of 1955 , sec.117 and Sch., for “transportation for life”(w.e.f.1-1-1956).

### COMMENTS

Where the presence of informant and other witnesses at the time and place of incident was established and their positive evidence regarding the way in which the dacoity was committed found reliable having no previous enmity with accused, no case of false implication established therefore, conviction of accused under section 395 was just and proper; Chhedu v. State of Uttar Pradesh, 2000 Cr LJ 78 (All).

**395. Dacoity with murder.**- If any one of five or more persons, who are conjointly committing dacoity, commits murder in so committing dacoity, every one of those persons shall be punished with death, or <sup>1</sup>[imprisonment for life], or rigorous imprisonment for a term which may extend to ten years, and shall be also be liable to fine.

### CLASSIFICATION OF OFFENCE

Punishment- Death, imprisonment for life, or rigorous imprisonment for 10 years and fine-  
Cognizable- Non-bailable-Triable by Court of Session-Non-compoundable.

### COMMENTS

- (i) when prosecution failed to establish any nexus between death and commission of dacoity charge under section 396 will fail; Wakil Singh v.State of Bihar, (1981) BLJ 462.
- (ii) When the presence of accused persons recoveries of different items of an incriminating nature from each of them are sufficient to establish that all of them conjointly participated in the offence of dacoity with murder, therefore their conviction under section 396 is liable to be confirmed; K.M.Ibrahim alias Bava v. State of Karnataka, 2000 Cr LJ 197 (Karn).
- (iii) On considering special facts of the case. i.e. the age of accused and their status in life as also their antecedents, Sentence of 10 years R.I in place of sentence of life imprisonment would meet the ends of justice; K.M. Ibrahim alias Bava v. State of Lakshimsher Das. 1999 Cr LJ 197 (Karn)

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1. Subs. by Act 26 of 1955 , sec.117 and Sch., for “transportation for life”(w.e.f.1-1-1956).

- (iv) In circumstantial evidences utter importance is of linking of chain, as soon as the chain of link is broken the value of circumstantial evidence gets reduced; State v. Lakshimsher Das, 1999 Cr LJ 2893 (Karn).

- (v) When it is evidentially proved that accused were participating in loot and murder during transaction of offence, each of them is liable to be punished under punish ability vide section 396 IPC; Kunwar Lal v. State of Madhya Pradesh, 199 Cr LJ 3632 (MP).

**396. Robbery, or dacoity , with attempt to cause death or grievous hurt.-** If ,a t the time of committing robbery or dacoity, the offender uses any deadly weapon, or the time of committing robbery or dacoity, the offender uses any deadly weapon, or cause grievous hurt to any person, or attempts to cause death or grievous hurt to any person, the imprisonment with which such offender shall be punishable shall not be less than seven years.

#### CLASSIFICATION OF OFFENCE

Punishment-Rigorous imprisonment for not less than 7 years -Cognizable –Non-bailable-Triable by Magistrate of the first class–Non-compoundable.

#### COMMENTS

- (i) An act would only fall within the mischief of this section if at the time of committing robbery or dacoity the offender-
- uses any deadly weapon; or
- causes grievous hurt to any person; or
- attempts to cause death or grievous hurt to any person; Shravan Dashrath Dartange v. State of Maharashtra, (1997)2 Crimes 47 (Bom).
- (ii) There can be no quarrel that knife is a deadly weapon within the meaning of section 397; State of Maharashtra v. Vinayak Tukaram Utekar, (1997) 2 Crimes 615 (Bom).
- (iii) When identification of articles alleged to have been recovered from accused is not properly proved nor victim could identify accused in identification parade or in court accused cannot be convicted under section 397; Bhurekhan v.State of Madhya Pradesh , AIR 1982 SC 984: (1982) CR LJ 818: (1982) SCC (Cr) 128.

**397. Attempt to commit robbery or dacoity when armed with deadly weapon.-** If , at the time of attempting to commit robbery or dacoity , the offender is armed with any deadly weapon, the imprisonment with which such offender shall be punished shall not be less than seven years.

**398. Making preparation to commit dacoits.-** Whoever makes , any preparation for committing dacoity,

shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

**CLASSIFICATION OF OFFENCE**

Punishment-Rigorous imprisonment for 10 years and fine -Cognizable –Non-bailable-Triable by Court of Session–Non-compoundable

**399. Punishment for belonging to gang of dacoits .-** Whoever, at any time after the passing of this Act, shall belong to a gang of persons associated for the purpose of habitually committing dacoity , shall be punished with <sup>1</sup>[imprisonment for life], or with rigorous imprisonment for a term which may extend to ten years , and shall also be liable to fine.

**CLASSIFICATION OF OFFENCE**

Punishment- Imprisonment for life, or 10 years and fine -Cognizable –Non-bailable-Triable by Court of Session–Non-compoundable.

**400. Punishment for belonging to gang of thieves.-** Whoever, at any time after the passing of this Act, shall be one of five or more persons assembled for the purpose of committing dacoity ,shall be punished with rigorous imprisonment for a tem which may extend to seven years ,and shall also be liable to fine.

*CLASSIFICATION OF OFFENCE*

Punishment-Rigorous imprisonment for 7Years and fine -Cognizable –Non-bailable-Triable by Magistrate of the first class–Non-compoundable.

**401. Assembling for purpose of committing dacoity.-** Whoever, at any time after the passing of this Act, shall be one of five or more persons assembled or the purpose of committing dacoity , shall be punished with rigorous imprisonment for a term which may extend to seven years , and shall also be liable to fine.

## CLASSIFICATION OF OFFENCE

Punishment-Rigorous imprisonment for 7 years and fine -Cognizable –Non-bailable-Triable by Court of Session–Non-compoundable

**402. Dishonest misappropriation of property.-** Whoever dishonestly misappropriates or converts to his own use any movable property, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

### Illustrations

- (a) A takes property belonging to Z out of Z's possession, in good faith, believing, at any time when he takes it, that the property belongs to himself. A is not guilty of theft; but if A, after discovering his mistake, dishonestly appropriates the property to his own use, he is guilty of an offence under this section.
- (b) A, being on friendly Z's absence, and takes away a book without Z's express consent. Here, if A was under the impression that he had Z's implied consent to take for the purpose of reading it, A has not committed theft, if A afterwards sells the book for his own benefit, he is guilty of an offence under this section.
- (c) A and B, being joint owners of a horse, A takes the horse out of B's possession, intending to use it. Here, as A has a right to use the horse, he is guilty of an offence under this section.

*Explanation 1.-* A dishonest misappropriation for a time only is a misappropriation with the meaning of this section.

### Illustration

A finds a Government promissory note belonging to Z, bearing a blank endorsement. A, knowing that the note belongs to Z, pledges it with a banker as a security for a loan, intending at a future time to restore it to Z. A has committed an offence under this section.

*Explanation 2.-* A person who finds property not in the possession of any other person, and takes such property for the purpose of protecting it for, or of restoring it to, the owner does not take or misappropriate it dishonestly, and is not guilty of an offence; but he is guilty of the offence above defined, if he appropriates it to his own use, when he knows or has the means of discovering the owner, or before he has used reasonable means to discover and gives notice to the owner and has kept the property a reasonable time to enable the owner to claim it.

What are reasonable means or what is a reasonable time in such a case, is a question of fact.

It is not necessary that the finder should know who is the owner of the property, or that any particular person is the owner of it; it is sufficient if, at the time of appropriating it, he does not believe it to be his own property, or in good faith believing that the real owner cannot be found.

### Illustrations

- (a) A finds a rupee on the high road, not knowing to whom the rupee belongs. A picks up the rupee. Here A has not committed the offence defined in this section.
- (b) A finds a letter on the road, containing a bank note. From the direction and contents of the letter he learns to whom the note belongs. He appropriates the note. He is guilty of an offence under this section.
- (c) A finds a cheque payable to bearer. He can form no conjecture as to the person who has lost the cheque. But the name of the person, who has drawn the cheque, appears. A knows that this person can direct him to the person in whose favor the cheque was drawn. A appropriates the cheque without attempting to discover the owner. He is guilty of an offence under this section.
- (d) A sees Z drop his purse with money in it. A picks up the purse with the intention of restoring it to Z, but afterwards appropriates it to own use. A has committed an offence under this section.
- (e) A finds a purse with money, not knowing to whom it belongs; he afterwards discovers that it belongs to Z, and appropriates it to his own use. A is guilty of an offence under this section.

A finds a valuable ring, not knowing to whom it belongs. A sells it immediately without attempting to discover the owner, A is guilty of an offence under this section.

### CLASSIFICATION OF OFFENCE

Punishment-Imprisonment for 2 years, or fine, or both-Non-cognizable –Bailable-Triable by Magistrate –Compoundable by the owner of the property misappropriated with the permission of the court.

#### **403. Dishonest misappropriation of property possessed by deceased person at the time of his death.-**

Whoever dishonestly misappropriates or converts to his own use property, knowing that such property was in the possession of a deceased person at the time of that person's death, and has not

since been in the possession of any person legally entitled to such possession , shall be punished with imprisonment of either description for a term which may extend to seven years.

### **Illustration**

Z dies in possession of furniture and money. His servant A, before the money comes into the possession of any person entitled to such possession, dishonestly misappropriates it. A has committed the offence defined

### **CLASSIFICATION OF OFFENCE**

Punishment-Imprisonment for 3 years and fine Non-Cognizable –Bailable-Triable by Magistrate of the first class –Non-compoundable.

If by clerk or person employed by deceased:

Punishment-Imprisonment for 7 years ,or fine, or both-Cognizable –Bailable-Triable by Magistrate of the first class –Non-compoundable.

### **Of Criminal Breach of Trust**

**404. Criminal breach of trust.-** Whoever, being in any manner entrusted with property , or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or willfully suffers any other person so to do , commits “criminal breach of trust”.

<sup>1</sup>[Explanation <sup>2</sup> [1]. –A person, being an employer <sup>3</sup>[of an establishment whether exempted under section 17 of the Employees’ Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952), or not+ who deducts the employee’s contribution from the wages payable to the employee for credit to a Provident Fund or Family Pension Fund established by any law for the time being in force, shall be deemed to have

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1. 1. Ins. by Act 40 of 1973, sec. (w.e.f.1-11-1973).
2. 2. Explanation renumbered as Explanation 1 by Act 38 of 1975,sec .9 (w.e.f.1-9-1975) .
3. 3. Ins. by Act 33 of 1988 , see. 27 (w.e.f.1-8-1988).

been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to the said Fund in violation of the said law, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid.]

<sup>1</sup>[Explanation 2.-A person , being an employer, who deducts the employees' contribution from the wages payable to the employee for credit to Employees' State Insurance Fund held and administered by the Employees ' State Insurance Corporation established under the Employees' State Insurance Act, 1948 (34 of 1948), shall be deemed to have been entrusted with the amount of the contribution to the said Fund in violation of the said Act, shall be deemed to have dishonestly used to amount of the said contribution in violation of a direction of law as aforesaid.]

### **Illustrations**

- (a) A, being executor to the will of a deceased person, dishonestly disobeys the law which directs him to divide the effects according to will, and appropriate them to his own use. A has committed criminal breach of trust.
- (b) A is warehouse-keeper. Z going on a journey, entrusts his furniture to A, under a contract that it shall be returned on payment of a stipulated sum for warehouse room.  
  
A dishonestly sells the goods. A has committed criminal breach of trust.]
- (c) A, residing in Calcutta, is agent for Z, resident at Delhi. There is an express or implied contract between A and Z, that all sums remitted by Z to A shall be investment by A, according to Z's direction. Z remits a lakh of rupees to A, with directions to A to invest the same in Company's paper. A dishonestly disobeys the direction and employs the money in his own business. A has committed criminal breach of trust.
- (d) But if A, in the last illustration , not dishonestly but in good faith, believing that it will be more for Z's advantage to hold shares in the Bank of Bengal, disobeys Z's directions, and buys shares in the Bank of Bengal, for Z, instead of buying a civil action against A, on account of that loss, yet A, not having acted dishonestly, has not committed criminal breach of trust.
- (e) A, a revenue- officer ,is entrusted with public money and is either directed by law or bound by a contract, express or implied, with the Government, to pay into a certain treasury all the public money which he holds. A dishonestly appropriates the money. A has committed criminal branch of trust.

A, a carrier, is entrusted by Z with property to be carried by land or bywater.

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1. 1. 1.Ins. by Act 38 of 1975, sec 9 (w.e.f.1-2-1975).

A dishonestly misappropriates the property. A has committed criminal breach of trust.

**405. Punishment for criminal breach of trust.-** Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

#### CLASSIFICATION OF OFFENCE

Punishment-Imprisonment for 3 years and fine, or both-Non-cognizable –Bailable-Triable by Magistrate of the first class –Compoundable by the owner of the property in respect of which breach of trust has been committed, with the permission of the court.

#### COMMENTS

Sanction for prosecution is not necessary if a public servant is charged for offence of entering into a criminal conspiracy for committing breach of trust; State or Kerala v. Padmanabham Nair, 1999 Cr LJ 3696 (SC).

**406. Criminal breach of trust by carrier , etc.-** Whoever, being entrusted with property a carrier, wharfinger or warehouse-keeper, commits criminal breach of trust in respect of such property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

#### CLASSIFICATION OF OFFENCE

Punishment-Imprisonment for 7 years and fine-Cognizable –Non-bailable-Triable by Magistrate of the first class –Compoundable by the owner of the property in respect of which the breach of trust has been committed with the permission of the court.

**407. Criminal breach of trust by clerk or servant.-** Whoever, being a clerk or servant or employed as a clerk or servant, and being in any manner entrusted in such capacity with property, or with any dominion over property, commits criminal breach of trust in respect of that property , shall be

punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

#### CLASSIFICATION OF OFFENCE

Punishment-Imprisonment for 7 years and fine-Cognizable –Non-bailable-Triable by Magistrate of the first class –Compoundable by the owner of the property in respect of which the breach of trust has been committed with the permission of the court.

**408. Criminal breach of trust by public servant, or by banker, merchant or agent.-** Whoever, being in any manner entrusted with property, or servant or in the way of his business as a banker, merchant, factor, broker, attorney or agent, commits criminal breach of trust in respect of that property, shall be punished with <sup>1</sup>[imprisonment for life], or with imprisonment of either description for a term which may extend to ten years. and shall also be liable to fine.

#### CLASSIFICATION OF OFFENCE

Punishment-Imprisonment for life ,or imprisonment for 10 years and fine -Cognizable –Non-bailable-Triable by Magistrate of the class–Non-compoundable.

### **Of the Receiving of Stolen Property**

**409. Stolen Property.-** Property, the possession whereof has been transferred by theft, or by extortion, or extortion, or by robbery, and property which has been criminally misappropriated or in respect of which <sup>2</sup>\*\*\*\*+ criminal breach of trust has been committed, is designed as “stolen property”, <sup>3</sup>[whether the transfer has been made, or the misappropriation or breach of trust has been committed, within or without <sup>4</sup>[India]]. But, if such property subsequently comes into the possession of a person legally entitled to the possession thereof, then cases to be stolen property.

**410. Dishonestly receiving stolen property.-** Whoever dishonestly receives or retains any stolen property, knowing or having reason to believe the same to be stolen property, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

## CLASSIFICATION OF OFFENCE

Punishment-Imprisonment for 3 years or fine, or both -Cognizable –Non-bailable-Triable by Magistrate- Compoundable by the owner of the property stolen with the permission of the court .

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1. 1. Subs. by Act 26 of 1955, sec. 117 and Sch., for “transportation for life” (w.e.f.1-1-1956)
2. 2. The words “the “ and “ offence of ‘rep. By Act 12 of 1891 , sec. 2 and Sch. I and Act 8 of 1882, sec.9 respectively.
3. 3. Ins. by Act 8 of 1882, sec.9.
4. 4. The words “British India” have successively been subs. by the A.O. 1948, the A.O. 1950 and Act 3 of 1951, sec.3 and Sch. to read as above.
5. 5. permission of the court .

## STATE AMENDMENT

### State of Tamil Nadu:

Section 411 of principal Act shall be renumbered as sub-section (1) of that section and after sub-section (1) as so renumbered, the following sub-section shall be added,namely:-

“(2) Whoever dishonestly receives or retains any idol or icon stolen from any building used as a place of worship knowing or having reason to believe the same to be stolen property shall, notwithstanding anything contained in sub-section (1), be punished with rigorous imprisonment which shall not be less than two years but which shall be less than two thousand rupees:

Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than two years”.

[Vide Tamil Nadu Act 28 of 1993, section 3].

**411.Dishonestly receiving property stolen in the commission of a dacoity .-** Whoever dishonestly receives or retains any stolen property, the possession where of he knows or has reason to believe to have been transferred by the commission of dacoity , or dishonestly receives from a person, whom he knows has reason to believe to belong or to have belonged to a gang of dacoits, property which he knows or has reason to believe to have been stolen, shall be punished with <sup>1</sup>[imprisonment for life], or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

## CLASSIFICATION OF OFFENCE

Punishment-Imprisonment for life, or rigorous imprisonment for 10 years and fine-Cognizable – Non-bailable-Triable by Court of Session–Non-compoundable.

### COMMENTS

- (i) When articles were received soon after dacoity and proved to have been stolen in dacoity, offence falls under section 412 and not under section 395; *Amar Singh v. State v. Madhya Pradesh*, AIR 1982 SC 129 : (1982) Cr LJ 610.
- (ii) When no part of prosecution case is found reliable including the alleged recovery of stolen property at the instance of accused it seems to be an effort by police to involve the accused persons by hook or by crook therefore conviction of co-accused is also liable to be set aside; *State v. Chhotey Lal*, 1999 Cr LJ 3411 (Del).

**412. Habitually dealing in stolen property.-** Whoever habitually receives or deals in property which he knows or has reason to believe to be stolen property, shall be punished with <sup>1</sup>[imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

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1. Subs. by Act 26 of 1955, sec. 117 and Sch. for "transportation for life" (w.e. f. 1-1-1950)

## CLASSIFICATION OF OFFENCE

Punishment-Imprisonment for life, or imprisonment for 10 years and fine -Cognizable –Non-bailable-Triable by Court of Session - Non-compoundable.

**413. Assisting in concealment of stolen property.-** Whoever voluntarily assists in concealing or disposing of or making away with property which he knows or has reason to believe to be stolen property, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

## CLASSIFICATION OF OFFENCE

Punishment-Imprisonment for 3 years, or fine, or both -Cognizable –Non-bailable-Triable by Magistrate –Compounded by the owner of the property stolen with the permission of the court .

## Of Cheating

**414. cheating.**-Whoever , by deceiving any person, fraudulently or dishonestly induce the person so deceived to deliver any property to any person, or to consent that any person shall retain any property ,or intentionally induces the person so deceived to do which act or omission cause or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to “cheat”.

*Explanation.-* A dishonest concealment of facts is a deception within the meaning of this section.

### Illustration

- (a) A ,by falsely pretending to be in the Civil Service , intentionally deceives Z ,and thus dishonestly induces Z to let him have on credit goods for which he does not mean to pay. A cheats.
- (b) A, by putting a counterfeit mark on an article, intentionally deceives Z into a belief that this article was made by a certain celebrated manufacturer, and thus dishonestly induces Z to buy and pay for the article. A cheats.
- (c) A. by exhibiting to Z a false sample of an article, intentionally deceives Z into believing that the article corresponds with the sample, and thereby, dishonestly induces Z to buy and pay for the article. A cheats.
- (d) A, by tendering in payment for an article a bill on a house with which A keeps on money , and by which A expects that the bill will be dishonored, intentionally deceives Z, and thereby dishonestly induces Z to deliver the article, intending not to pay for it. A cheats.
- (e) A, by pledging as diamonds article which he knows are not diamonds, intentionally deceives Z, and thereby dishonestly induces Z to lend money. A cheats.

- (f) A intentionally deceives Z into a belief that A means to repay any money that Z may lend to him and thereby dishonestly induces Z to lend him money. A not intending to repay it .A cheats.
- (g) A intentionally deceives Z into a belief that A means to deliver to Z a certain quantity of indigo plant which he does not intend to deliver . and thereby dishonestly induces Z to advance money upon the faith of such delivery, A cheats; but if A, at the time of obtaining the money, intends to deliver the indigo plant, and afterwards breaks his contract and does not deliver it, he does not cheat, but is liable only to a civil action for breach of contract.
- (h) A intentionally deceives Z into a belief that A has performed A's part of a contract made with Z, which he has outperformed, and thereby dishonestly induces Z to pay money . A cheats.
- (i ) A sells and conveys an estate to B.A, knowing that in consequence of such sale he has no right to the property , sells or ,mortgages the same to Z, without disclosing the fact of the previous sale and conveyance to B, and receives the purchase or ,mortgage money for Z.A cheats.

**415. Cheating by personating.-** A person is said to “cheat by personation” if he cheats by pretending to be some other person, or by knowingly substituting one person for another, or representing that he or any other person is a person other than he or such other person really is.

*Explanation-*The offence is committed whether the individual personated is a real or imaginary person.

### **Illustration**

(a) A cheats by pretending to be a certain rich banker of the same name. A cheats by personating.

(b) A cheats by pretending to be B, a person who is deceased. A cheats by personation

**416. Punishment for cheating.-** Whoever cheats shall be punished with imprisonment of either description for a term which may extend to one year, or with fine or both.

#### CLASSIFICATION OF OFFENCE

Punishment-Imprisonment for 1 years or fine, or both-Non-cognizable –Bailable-Triable by Magistrate –Compoundable by the person cheated with the permission of the court.

**417. Cheating with knowledge that wrongful loss may ensue to person whose interest offender is bound to protect.-** Whoever cheats with the knowledge that he is likely thereby to cause wrongful loss to a person whose interest in the transaction to which the cheating relates, he was bound, either by law, or by a legal contract, to protect, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

#### CLASSIFICATION OF OFFENCE

Punishment-Imprisonment for 3 years or fine, or both-Non-cognizable –Bailable-Triable by Magistrate –Compoundable by the person cheated with the permission of the court.

**418. Punishment for cheating by personation .-** Whoever cheats by personation shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

#### CLASSIFICATION OF OFFENCE

Punishment-Imprisonment for 3 years or fine, or both-Non-cognizable –Bailable-Triable by Magistrate –Compoundable by the person cheated with the permission of the court.

**419. Cheating and dishonestly inducing delivery of property. –** Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment for either description for a term which may extend to seven years, and shall also be liable to fine.

#### CLASSIFICATION OF OFFENCE

Punishment-Imprisonment for 7 years and fine-Cognizable –Non-bailable-Triable by Magistrate of the first class –Compoundable by the person cheated with the permission of the court.



## Of **Fraudulent** Deeds and Disposition of Property

**420. Dishonest or fraudulent removal or concealment of property to prevent distribution among creditors.-** Whoever dishonestly or fraudulently removes, conceals or delivers to any person to transfer or causes to be transferred to any person, without adequate consideration , any property , intending there by to prevent, or knowing it to be likely that he will thereby prevent, the distribution for a term which may extend to two years, or with fine, or with both.

### CLASSIFICATION OF OFFENCE

Punishment-Imprisonment for 2 years, or fine, or both-Non-cognizable –Bailable-Triable by Magistrate –Compoundable by the creditor who are affected thereby with the permission of the court.

**421. Dishonestly or fraudulently preventing debt being available for creditors.-** Whoever dishonestly or fraudulently prevents any debt or demand due to himself or to any other person from being made available according to law or payment of his debts or the debts of such other person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine ,or with both.

### CLASSIFICATION OF OFFENCE

Punishment-Imprisonment for 2 years, or fine, or both-Non-cognizable –Bailable-Triable by Magistrate –Compoundable by the creditor who are affected thereby with the permission of the court.

**422. Dishonest or fraudulent execution of deed of transfer containing false statement of consideration.-** Whoever dishonestly or fraudulently signs, executes or become a party to any deed or instrument which purports to transfer or subject to any charge any property ,or any interest therein ,and which contains any false statement relating to the consideration for such transfer for charge , or relating to the person or persons for whose use or benefit it is really intended to operate, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

### CLASSIFICATION OF OFFENCE

Punishment-Imprisonment for 2 years, or fine, or both-Non-cognizable –Bailable-Triable by Magistrate –Compoundable by the creditor who are affected thereby with the permission of the court.

**423. Dishonest or fraudulent removal or concealment of property .-** Whoever dishonestly or fraudulently conceals or removes any property of himself or any other person, or dishonestly or fraudulently assists in the concealment or removal thereof, or dishonestly releases any demand or claim to which he is entitled, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

#### CLASSIFICATION OF OFFENCE

Punishment-Imprisonment for 2 years, or fine, or both-Non-cognizable –Bailable-Triable by Magistrate –Compoundable by the person affected thereby with the permission of the court.

#### Of Mischief

**424. Mischief .-** Whoever with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person, cause the destruction of any property, or any such change in any property or in the situation thereof as desirous or diminishes its value or utility, or affects it injuring , commits “mischief “.

*Explanation 1.* –It is not essential to the offence of mischief that the offender should intend to cause loss or damage to the owner or the property injured or destroyed. It is sufficient if he intends to cause, or knows that he is likely to cause, wrongful loss or damage to any person by injuring any property , whether it belongs to the person or not.

*Explanation 2.-* Mischief may be committed by an act affecting property belonging to the person who commits the act, or to that person and others jointly.

#### Illustrations

- (a) A voluntarily burns a valuable security belonging to Z intending to cause wrongful loss to Z. A has committed mischief .
- (b) A introduces water into an ice- house belonging to Z and thus causes the ice to melt, intending wrongful loss to Z. A has committed mischief.
- © A voluntarily throws into a river a ring belonging to Z , with the intention of thereby causing wrongful loss to Z. A has committed mischief.

- (d) A, knowing the his effects are about to be taken in execution in order to satisfy a debt due from him to Z, destroys those effects, with the intention of thereby preventing Z from obtaining satisfaction of the debt, and of thus causing damage to Z. A has committed mischief.
- (e) A, having insured a ship to be cast away , with the intention of causing damage to the under-writers . A has committed mischief .
- (f) A causes a ship to be cast away, intending thereby to causes damage to Z who has lent money on bottomry on the ship. A has committed mischief.
- (g) A, having joint property with Z in a hoarse, shoots the horse ,intending to thereby to cause wrongful loss to Z. A has committed mischief.
- (h) A cause cattle to enter upon a field belonging to Z, intending to cause and knowing that he is likely to cause damage to Z's crop. A has committed mischief

**425. Punishment for mischief.**- Whoever commits mischief shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

#### CLASSIFICATION OF OFFENCE

Punishment-Imprisonment for months, or fine, or both-Non-cognizable –Bailable-Triable by Magistrate –Compoundable by person to whom the loss or damage is cause.

**426. Mischief causing damage to the amount of fifty rupees.**—Whoever commits mischief and thereby causes loss or damage to the amount of fifty rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

#### CLASSIFICATION OF OFFENCE

Punishment—Imprisonment for 2 years, or fine, or both—Non-cognizable—Bailable—Triable by any Magistrate—Compoundable by the person to whom the loss or damage is caused.

**428. Mischief by killing or maiming animal of the value of ten rupees.**—Whoever commits mischief by killing, poisoning, maiming, or rendering useless any animal or animals of the value of ten rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

#### **CLASSIFICATION** OF OFFENCE

Punishment—Imprisonment for 2 years, or fine, or both—Cognizable—Bailable—  
Triable by any Magistrate—Compoundable by the owner of the animal with the permission of the court.

**429. Mischief by killing or maiming cattle, *etc.*, of any value or any animal of the value of fifty rupees.**—Whoever commits mischief by killing, poisoning, maiming or rendering useless, any elephant, camel, horse, mule, buffalo, bull, cow or ox, whatever may be the value thereof, or any other animal of the value of fifty rupees or upwards, shall be punished with imprisonment of either description for a term which may be extend to five years, or with fine, or with both.

#### **CLASSIFICATION** OF OFFENCE

Punishment—Imprisonment for 5 years, or fine, or both—Cognizable—Bailable—  
Triable by any Magistrate—Compoundable by the owner of the cattle or animal with the permission of the court.

**430. Mischief by injury to works of irrigation or by wrongfully diverting water.**—Whoever commits mischief by doing any act which causes, or which he knows to be likely to cause, a diminution of the supply of water for agricultural purposes, or for food or drink for human beings or for animals which are property, or for cleanliness or for carrying on any manufacture, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

#### **CLASSIFICATION OF OFFENCE**

Punishment—Imprisonment for 5 years, or fine, or both—Cognizable—Bailable— Triable by Magistrate of the first class—Compoundable by the person to whom the loss or damage is caused with the permission of the court.

**431. Mischief by injury to public road, bridge, river or channel.**—Whoever commits mischief by doing any act which renders or which he knows to be likely to render any public road, bridge, navigable river or navigable channel, natural or artificial, impassable or less safe for traveling or conveying property, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

#### **CLASSIFICATION OF OFFENCE**

Punishment—Imprisonment for 5 years, or fine, or both—Cognizable—Bailable—Triable by Magistrate of the first class—Non-compoundable.

**432. Mischief by causing inundation or obstruction to public drainage attended with damage.**—Whoever commits mischief by doing any act which causes or which he knows to be likely to cause an inundation or an obstruction to any public drainage attended with injury or damage, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

#### CLASSIFICATION OF OFFENCE

Punishment—Imprisonment for 5 years, or fine, or both—Cognizable—Bailable—  
Triable by Magistrate of the first class—Non-compoundable.

#### **433. Mischief by destroying, moving or rendering less useful a light-house or sea-mark.—**

Whoever commits mischief by destroying or moving any light-house or other light used as sea-mark or any sea-mark or buoy or other thing placed as a guide for navigators, or by any act which renders any such light-house, sea-mark, buoy or other such thing as aforesaid less useful as a guide for navigators, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

#### CLASSIFICATION OF OFFENCE

Punishment—Imprisonment for 7 years, or fine, or both—Cognizable—Bailable—  
Triable by Magistrate of the first class—Non-compoundable.

#### **434. Mischief by destroying or moving, *etc.*, a land-mark fixed by public authority.—**

Whoever commits mischief by destroying or moving any land-mark fixed by the authority of a public servant, or by any act which renders such land-mark fixed useful as such, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

#### CLASSIFICATION OF OFFENCE

Punishment—Imprisonment for 1 year, or fine, or both—Non-cognizable—Bailable—  
Triable by any Magistrate—Non-compoundable.

**435. Mischief by fire or explosive substance with intent to cause damage to amount of one hundred or (in case of agricultural produce) ten rupees.—**Whoever commits mischief by fire or any explosive substance intending to cause, or knowing it to be likely that he will thereby cause, damage to any property to the amount of one hundred rupees or upwards <sup>1</sup>[or (where the

property is agricultural produce) ten rupees or upwards], shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

1. 1. Ins. By Act 8 of 1882, sec.10.

#### **CLASSIFICATION OF OFFENCE**

Punishment—Imprisonment for 7 years and fine—Cognizable—Bailable—Triable by Magistrate of the first class—Non-compoundable.

**436. Mischief by fire or explosive substance with intent to destroy house, *etc.***—Whoever commits mischief by fire or any explosive substance, intending to cause, or knowing it to be likely that he will thereby cause, the destruction of any building which is ordinarily used as a place of worship or as a human dwelling or as a place for the custody of property, shall be punished with <sup>1</sup>[imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

#### **CLASSIFICATION OF OFFENCE**

Punishment—Imprisonment for life, or imprisonment for 10 years and fine—Cognizable—Non-bailable—Triable by Court of Session—Non-compoundable.

**437. Mischief with intent to destroy or make unsafe a decked vessel or one of twenty tons burden.**—Whoever commits mischief to any decked vessel or any vessel of a burden of twenty tons or upwards, intending to destroy or render unsafe, or knowing it to be likely that he will thereby destroy or render unsafe, that vessel, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

#### CLASSIFICATION OF OFFENCE

Punishment—Imprisonment for 10 years and fine—Cognizable—Non-bailable—Triable by Court of Session—Non-compoundable.

**438. Punishment for the mischief described in section 437 committed by fire or explosive substance.**—Whoever commits, or attempts to commit, by fire or any explosive substance, such mischief as is described in the last preceding section, shall be punished with <sup>1</sup>[imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

1. Subs., By Act 26 of 1955, sec. 117 and Sch., for “transportation for life” (w.e.f. 1/1/1956)

#### CLASSIFICATION OF OFFENCE

Punishment—Imprisonment for life, or imprisonment for 10 years and fine—Cognizable—Non-bailable—Triable by Court of Session—Non-compoundable.

**439. Punishment for intentionally running vessel aground or ashore with intent to commit theft, etc.**—Whoever intentionally runs any vessel aground or ashore, intending to commit theft of any property contained therein or to dishonestly misappropriate any such property, or with intent that such theft or misappropriation of property may be committed, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

#### CLASSIFICATION OF OFFENCE

Punishment—Imprisonment for 10 years and fine—Cognizable—Non-bailable—Triable by Court of Session—Non-compoundable.



**440. Mischief committed after preparation made for causing death or hurt.**—Whoever commits mischief, having made preparation for causing to any person death, or hurt, or wrongful restraint, or fear of death, or of hurt, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

#### **CLASSIFICATION OF OFFENCE**

Punishment—Imprisonment for 5 years and fine—Cognizable—Bailable—Triable by Magistrate of the first class—Non-compoundable.

#### **Of Criminal Trespass**

**441. Criminal trespass.**—Whoever enters into or upon property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property,

or having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence,

is said to commit “criminal trespass”.

#### **STATE AMENDMENT**

##### **State of Uttar Pradesh:**

For section 441, substitute the following :--

—**441. Criminal trespass.**—Whoever enters into or upon property in possession of another with intent to commit an offence or to intimidate, insult or annoy and person in possession of such property, or having lawfully entered into or upon such property, unlawfully remains therewith intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence,

or, having entered into or upon such property, whether before or after the coming into force of the Criminal Law (U.P. Amendment) Act, 1961, with the intention of taking unauthorised possession or making unauthorised use of such property fails to withdraw from such property or its possession or use, when called upon to do so by that another person by notice in writing, duly served upon him, by the date specified in the notice, is said to commit —criminal trespass§.

[Vide U.P. Act No.31 of 1961, section 2].

**442. House trespass.**—Whoever commits criminal trespass by entering into or remaining in any building, tent or vessel used as a human dwelling or any building used as a place for worship, or as a place for the custody of property, is said to commit —house-trespass§.

*Explanation.*—The introduction of any part of the criminal trespasser's body is entering sufficient to constitute house-trespass.

**443. Lurking house-trespass.**—Whoever commits house-trespass having taken precautions to conceal such house-trespass from some person who has a right to exclude or eject the trespasser from the building, tent or vessel which is the subject of the trespass, is said to commit —lurking house-trespass§.

**444. Lurking house-trespass by night.**—Whoever commits lurking house-trespass after sunset and before sunrise, is said to commit —lurking house-trespass by night§.

**445. House breaking.**—A person is said to commit —house-breaking§ who commits house-trespass if he effects his entrance into the house or any part of it in any of the six ways hereinafter described; or if, being in the house or any part of it for the purpose of committing an offence, or, having committed an offence therein, he quits the house or any part of it in any of such six ways, that is to say:--

*First.*—If he enters or quits through a passage by himself, or by any abettor of the house-trespass, in order to the committing of the house-trespass.

*Secondly.*—If he enters or quits through any passage not intended by any person, other than himself or an abettor of the offence, for human entrance; or through any passage to which he has obtained access by scaling or climbing over any wall or building.

*Thirdly.*—If he enters or quits through any passage which he or any abettor of the house-trespass has opened, in order to the committing of the house-trespass by any means by which that passage was not intended by the occupier of the house to be opened.

*Fourthly.*—If he enters or quits by opening any lock in order to the committing of the house-trespass, or in order to the quitting of the house after a house-trespass.

*Fifthly.*—If he effects his entrance or departure by using criminal force or committing an assault or by threatening any person with assault.

*Sixthly.*—If he enters or quits by any passage which he knows to have been fastened against such entrance or departure, and to have been unfastened by himself or by an abettor of the house-trespass.

*Explanation.*—Any out-house or building occupied with a house, and between which and such house there is an immediate internal communication, is part of the house within the meaning of this section.

### **Illustrations**

- (a) A commits house-trespass by making a hole through the wall of Z's house, and putting his hand through the aperture. This is house-breaking.
- (b) A commits house-trespass by creeping into a ship at a port-hole between decks. This is house-breaking.
- (c) A commits house-trespass by entering Z's house through a window. This is house-breaking.

- (d) A commits house-trespass by entering Z's house through the door, having opened a door which was fastened. This is house-breaking.
- (e) A commits house-trespass by entering Z's house through the door, having lifted a latch by putting a wire through a hole in the door. This is house-breaking.
- (f) A finds the key of Z's house door, which Z has lost, and commits house-trespass by entering Z's house, having opened the door with that key. This is house-breaking.
- (g) Z is standing in his doorway. A forces a passage by knocking Z down, and commits house-trespass by entering the house. This is house-breaking.
- (h) Z, the door-keeper of Y, is standing in Y's doorway. A commits house-trespass by entering the house, having deterred Z from opposing him by threatening to beat him. This is house-breaking.

**446. House-breaking by night.**—Whoever commits house-breaking after sunset and before sunrise, is said to commit —house-breaking by night.

**447. Punishment for criminal trespass.**—Whoever commits criminal trespass shall be punished with imprisonment of either description for a term which may extend to three months, with fine or which may extend to five hundred rupees, or with both.

### **CLASSIFICATION OF OFFENCE**

Punishment—Imprisonment for 3 months, or fine of 500 rupees, or both—  
Cognizable—Bailable—Triable by any Magistrate—Compoundable by the person in possession of the property trespassed upon.

## COMMENTS

Mere vague allegations are not sufficient for conviction under section 498 for criminal trespass; Bhaskar Chatteraj v. State of West Bengal, 91991) Cr LJ 429 (SC).

**448. Punishment for house-trespass.**—Whoever commits house-trespass shall be punished with imprisonment of either description for a term which may extend to one year, or with fine or which may extend to one thousand rupees, or with both.

### CLASSIFICATION OF OFFENCE

Punishment—Imprisonment for one year, or fine of 1000 rupees, or both—Cognizable—Bailable—Triable by any Magistrate—Compoundable by the person in possession of the property trespassed upon.

**449. House-trespass in order to commit offence punishable with death.**—Whoever commits house-trespass in order to the committing of any offence punishable with death, shall be punishable with [imprisonment for life], or with rigorous imprisonment for a term not exceeding ten years, and shall also be liable to fine.

### CLASSIFICATION OF OFFENCE

Punishment—Imprisonment for life, or rigorous imprisonment for 10 years and fine—Cognizable—Non-bailable—Triable by Court of Session—Non-compoundable.

**450. House-trespass in order to commit offence punishable with imprisonment for life.**—Whoever commits house-trespass in order to the committing of any offence punishable with [imprisonment for life], shall be punished with imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.

## CLASSIFICATION OF OFFENCE

Punishment—Imprisonment for 10 years and fine—Cognizable—Non-bailable—Triable by Court of Session—Non-compoundable.

**451. House-trespass in order to commit offence punishable with imprisonment.**—Whoever commits house-trespass in order to the committing of any offence punishable with imprisonment, shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine; and if the offence intended to be committed is theft, the term of the imprisonment may be extended to seven years.

## CLASSIFICATION OF OFFENCE

**Para I:** Punishment—Imprisonment for 2 years and fine—Cognizable—Bailable—Triable by any Magistrate.

**Para II:** Punishment—Imprisonment for 7 years and fine—Cognizable—Non-bailable—Triable by any Magistrate—Compoundable by the person in possession of the house trespassed upon with the permission of the court.

**452. House-trespass after preparation for hurt, assault or wrongful restraint.**—Whoever commits house-trespass, having made preparation for causing hurt to any person or for assaulting any person, or for wrongfully restraining any person, or for putting any person in fear of hurt, or of assault, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

## CLASSIFICATION OF OFFENCE

Punishment—Imprisonment for 7 years and fine—Cognizable—Non-bailable—Triable by any Magistrate—Non-compoundable.

**453. Punishment for lurking house-trespass or house-breaking.**—Whoever commits lurking house-trespass or house-breaking, shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine.

## CLASSIFICATION OF OFFENCE

Punishment—Imprisonment for 2 years and fine—Cognizable—Non-bailable—Triable by any Magistrate—Non-compoundable.

**454. Lurking house-trespass or house-breaking in order to commit offence punishable with imprisonment.**—Whoever commits lurking house-trespass or house-breaking, in order to the committing of any offence punishable with imprisonment, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and if the offence intended to be committed is theft, the term of the imprisonment may be extended to ten years.

## CLASSIFICATION OF OFFENCE

**Para I:** Punishment—Imprisonment for 3 years and fine—Cognizable—Non-bailable—Triable by any Magistrate—Non-compoundable.

**Para II:** Punishment—Imprisonment for 10 years and fine—Cognizable—Non-bailable—Triable by Magistrate of the first class—Non-compounded.

## STATE AMENDMENT

### State of Tamil Nadu:

Section 454 of the principal Act shall be renumbered as sub-section(1) of that section and after sub-section(1) as so renumbered, the following sub-section shall be added, namely:--

—(2) Whoever commits lurking house-trespass or house-breaking in any building used as a place of worship, in order to the committing of the offence of theft of any idol or icon from such building, shall notwithstanding anything contained in sub-section (1), be punished with rigorous imprisonment which shall not be less than less than three years but which may extend to ten years and with fine which shall not be less than five thousand rupees:

Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than three years.

[*Vide* Tamil Nadu Act No.28 of 1993, section 4].

**455. Lurking house-trespass or house-breaking after preparation for hurt, assault or wrongful restraint.**—Whoever commits lurking house-trespass, or house-breaking, having made preparation for causing hurt to any person, or for assaulting any person, or for wrongfully restraining any person, or for putting any person in fear of hurt, or of assault, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

## CLASSIFICATION OF OFFENCE

Punishment—Imprisonment for 10 years and fine—Cognizable—Non-bailable—Triable by Magistrate of the first class—Non-compoundable.



**456. Punishment for lurking house-trespass or house-breaking by night.**—Whoever commits lurking house trespass by night, or house-breaking by night, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

#### **CLASSIFICATION OF OFFENCE**

Punishment—Imprisonment for 3 years and fine—Cognizable—Non-bailable—Triable by any Magistrate—Non-compoundable.

**457. Lurking house-trespass or house-breaking by night in order to commit offence punishable with imprisonment.**—Whoever commits lurking house-trespass by night, or house-breaking by night, in order to the committing of any offence punishable with imprisonment, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine; and, if the offence intended to be committed is theft, the term of the imprisonment may be extended to fourteen years.

#### **CLASSIFICATION OF OFFENCE**

**Para I:** Punishment—Imprisonment for 5 years and fine—Cognizable—Non-bailable—Triable by Magistrate of the first class—Non-compoundable.

**Para II:** Punishment—Imprisonment for 14 years and fine—Cognizable—Non-bailable—Triable by Magistrate of the first class.

#### **STATE AMENDMENT**

##### **State of Tamil Nadu:**

Section 454 of the principal Act shall be renumbered as sub-section(1) of that section and after sub-section(1) as so renumbered, the following sub-section shall be added, namely:--

—(2) Whoever commits lurking house-trespass or house-breaking in any building used as a place of worship, in order to the committing of the offence of theft of any idol or icon from such building, shall notwithstanding anything contained in sub-section (1), be punished with

rigorous imprisonment which shall not be less than three years but which may extend to ten years and with fine which shall not be less than five thousand rupees:

Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than three years.

[*Vide* Tamil Nadu Act No.28 of 1993, section 4].

**455. Lurking house-trespass or house-breaking after preparation for hurt, assault or wrongful restraint.**—Whoever commits lurking house-trespass, or house-breaking, having made preparation for causing hurt to any person, or for assaulting any person, or for wrongfully restraining any person, or for putting any person in fear of hurt, or of assault, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

#### **CLASSIFICATION OF OFFENCE**

Punishment—Imprisonment for 10 years and fine—Cognizable—Non-bailable—Triable by Magistrate of the first class—Non-compoundable.

**456. Punishment for lurking house-trespass or house-breaking by night.**—Whoever commits lurking house trespass by night, or house-breaking by night, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

## CLASSIFICATION OF OFFENCE

Punishment—Imprisonment for 3 years and fine—Cognizable—Non-bailable—Triable by any Magistrate—Non-compoundable.

**457. Lurking house-trespass or house-breaking by night in order to commit offence punishable with imprisonment.**—Whoever commits lurking house-trespass by night, or house-breaking by night, in order to the committing of any offence punishable with imprisonment, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine; and, if the offence intended to be committed is theft, the term of the imprisonment may be extended to fourteen years.

## CLASSIFICATION OF OFFENCE

**Para I:** Punishment—Imprisonment for 5 years and fine—Cognizable—Non-bailable—Triable by Magistrate of the first class—Non-compoundable.

**Para II:** Punishment—Imprisonment for 14 years and fine—Cognizable—Non-bailable—Triable by Magistrate of the first class.

## STATE AMENDMENT

### State of Tamil Nadu:

Section 457 of the principal Act shall be renumbered as sub-section(1) of that section and after sub-section(1) as so renumbered, the following sub-section shall be added, namely:--

—(2)Whoever commits lurking house-trespass by night or house-breaking by night in any building used as a place of worship, in order to the committing of the offence of theft of any idol or icon from such building, shall, notwithstanding anything contained in sub-section (1), be punished with rigorous imprisonment which shall not be less than less than three years but which may extend to fourteen years and with fine which shall not be less than five thousand rupees:

Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than three years.

[Vide Tamil Nadu Act No.28 of 1993, section 5].

## **State of Uttar Pradesh:**

Amendment of section 457 - section 457 of the principal Act shall be renumbered as sub-section(1) of that section and after sub-section(1) as so renumbered, the following sub-section shall be added, namely:--

(2) Whoever commits lurking house-trespass by night or house-breaking by night in any building used as a place of worship, in order to the committing of the offence of theft of any idol or icon from such building, shall, notwithstanding anything contained in sub-section (1), be punished with rigorous imprisonment which shall not be less than less than three years but which may extend to fourteen years and with fine which shall not be less than five thousand rupees:

Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than three years.

[*Vide* U.P. Act No.24 of 1995, sec. 11].

**458. Lurking house-trespass or house-breaking by night after preparation for hurt, assault, or wrongful restraint.**—Whoever commits lurking house-trespass by night, or house-breaking by night, having made preparation for causing hurt to any person or for assaulting any person, or for wrongfully restraining any person, or for putting any person in fear of hurt, or of assault, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to fourteen years, and shall also be liable to fine.

## **CLASSIFICATION OF OFFENCE**

Punishment—Imprisonment for 14 years and fine—Cognizable—Non-bailable—Triable by Magistrate of the first class—Non-compoundable.

**459. Grievous hurt caused whilst committing lurking house trespass or house-breaking.—**

Whoever, whilst committing lurking house—breaking, causes grievous hurt to any person or attempts to cause death or grievous hurt to any person , shall be punished with [imprisonment for life], or imprisonment of either description for a term which may extend to ten year , and shall also be liable to fine.

**CLASSIFICATION OF OFFENCE**

Punishment—Imprisonment for life, or imprisonment for 10 years and fine—

Cognizable—Non-bailable—Triable by Court of Session –Non-compoundable.

**460. All persons jointly concerned in lurking house-trespass or house-breaking by night punishable where death or grievous hurt caused by one of them.—**

If, at the time of the committing of lurking house-trespass by night or house-breaking by night, any person guilty of such offence shall voluntarily cause or attempt to cause death or grievous hurt to any person, every person jointly concerned in committing such lurking house-trespass by night or house-breaking by night, shall be punished with [imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

**CLASSIFICATION OF OFFENCE**

Punishment—Imprisonment for life, or imprisonment for 10 years and fine—

Cognizable—Non-bailable—Triable by Court of Session –Non-compoundable.

**461. Dishonestly breaking open receptacle containing property.—**Whoever dishonestly or with intent to commit mischief, breaks open or unfastens any closed receptacle which contains or which he believes to contain property, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

## **CLASSIFICATION OF OFFENCE**

Punishment—Imprisonment for 2 years, or fine, or both—Cognizable—Bailable—  
Triable by any Magistrate—Non-compoundable.

### **462. Punishment for same offence when committed by person entrusted with custody.—**

Whoever, being entrusted with any closed receptacle which contains or which he believes to contain property, without having authority to open the same, dishonestly, or with intent to commit mischief, breaks open or unfastens that receptacle, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

## **CLASSIFICATION OF OFFENCE**

Punishment—Imprisonment for 3 years, or fine, or both—Cognizable—Bailable—  
Triable by any Magistrate—Non-compoundable.